IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1290 of 2005

Vishnu Kisanrao Lahane .. Appellant

V/s

1. Sukhadev Nago Kene

2. Rajaram Mahadeo Khairnar ..Respondents

Shri R.S.Datar for the Appellant

Shri A.A.Garge for Respondent nos.1 and 2

CORAR:S.R.SATHE,J.

DATED:23rd March 2006

P.C. :-

1. Heard both the learned Advocates.

2. The Appellant original plaintiff in Regular Civil Suit NO.413 of 1985 has preferred this appeal against the judgment and order passed by the first appellate Court whereby the decree passed in favour of the Appellant by the trial Court was reversed and the plaintiff's suit for possession of encroached portion was dismissed.

3. It is an admitted fact that present Respondents had

also filed a suit bearing Regular Civil Suit No.203 of 1985 against the present Appellant wherein he had alleged that the present Appellant is in fact trying to encroach upon his property and as such he had sought declaration and injunction. However, the said suit was dismissed by the trial Court.

4. Being aggrieved by that Kene, original plaintiff in Suit NO.203 of 1985 preferred the first appeal.

5. Thus both the appeals preferred by Kene were heard simultaneously. The appeal preferred against the decree of dismissal of Regular Civil Suit No.203 of 1985 was dismissed while the appeal preferred against the decree passed in Regular Civil Suit NO.413 of 1985 is allowed and the suit filed by the present Appellant bearing Regular Civil Suit NO.413 of 1985 was dismissed.

6. It is an admitted fact that Appellants and Respondents are having their respective properties adjacent to each other. It is also not in dispute that as per earlier agreement each of the plot holder was supposed to leave 5’ portion from the edge of his boundary land and then carry out the construction. Both the parties have made an attempt to show that other side has in fact made an encroachment. Unfortunately, both the parties did not adduce any cogent and convincing evidence to show the alleged

encroachment. It seems that they have not even adduced the evidence as regards the exact dimension and boundaries of their properties. So far as the present appellant is concerned, he had come out with a case that his construction was carried out by leaving 5’ portion open from his boundary line. However, subsequently he took a stand that he had in fact left 10’ portion open. So, it appears that he was also not consistent in his stand. The first appellate court has rightly held that the present Appellant had not even produced any authenticated map to show the exact measurement of his property and the alleged encroachment. Whatever map that was produced had no authenticity inasmuch as the same was not issued by the competent authority. Not only that it was not even reflected from the said map as to who has drawn the same. Person who had drawn the map was also not examined by the plaintiff. So, under such circumstances it cannot be said that the first appellate court has wrongly appreciated the evidence on record. The finding of fact recorded by the first appellate Court are legal and correct. There is no necessity to interfere with the same. There is no substantial question of law involved in this appeal.

. Hence the appeal is dismissed in limine.

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(S.R.SATHE,J.)